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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/749,195	12/30/2003	Duane Ottolini	59019 (3903)	9932
7590	08/15/2005			EXAMINER
John J. Penny, Jr. EDWARD & ANGELL, LLP P. O. Box 9169 Boston, MA 02209			BRINSON, PATRICK F	
			ART UNIT	PAPER NUMBER
			3754	
DATE MAILED: 08/15/2005				

Please find below and/or attached an Office communication concerning this application or proceeding.

SP

<b>Office Action Summary</b>	<b>Application No.</b>	<b>Applicant(s)</b>	
	10/749,195	OTTOLINI ET AL	
	<b>Examiner</b>	<b>Art Unit</b>	
	Patrick F. Brinson	3754	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

#### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

- 1) Responsive to communication(s) filed on 20 June 2005.  
 2a) This action is FINAL.                    2b) This action is non-final.  
 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

- 4) Claim(s) 1-15 is/are pending in the application.  
 4a) Of the above claim(s) 9-15 is/are withdrawn from consideration.  
 5) Claim(s) \_\_\_\_\_ is/are allowed.  
 6) Claim(s) 1-8 is/are rejected.  
 7) Claim(s) \_\_\_\_\_ is/are objected to.  
 8) Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

- 9) The specification is objected to by the Examiner.  
 10) The drawing(s) filed on \_\_\_\_\_ is/are: a) accepted or b) objected to by the Examiner.  
     Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
     Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).  
 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

- 12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
 a) All    b) Some \* c) None of:  
 1. Certified copies of the priority documents have been received.  
 2. Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.  
 3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)  | 4) <input type="checkbox"/> Interview Summary (PTO-413)                     |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                                   | Paper No(s)/Mail Date. _____  |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date _____ | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
|  | 6) <input type="checkbox"/> Other: _____                                    |

## DETAILED ACTION

1. Applicant's election without traverse of Group I, claims 1-8 in the reply filed on June 20, 2005 is acknowledged.

### *Claim Rejections - 35 USC § 102*

2. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless —

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1, 5 and 7 are rejected under 35 U.S.C. 102(b) as being anticipated by European patent App 0154104 to **Ekhолmer**.

The **Ekhолmer** reference discloses an end formed tube comprising a hollow tube having an inner portion and two ends, the end portion includes a lip formed of a polygonal shape. Fig. 1 discloses the polygonal shape as having 6 sides, or being hexagonal in shape, as recited in claim 5. **Ekhолмер** does not specifically disclose the lip as being formed by folding over an end portion of the tube, however, the method of forming the device is not germane to the issue of patentability of the device itself. Therefore, this limitation has not been given patentable weight.

3. Claims 2 and 8 are rejected under 35 U.S.C. 102(b) as being anticipated by US 3,881,520 to **Murphy**.

The **Murphy** reference discloses an end formed tube comprising a hollow tube having an inner portion and two ends, the end portion includes a lip formed of a polygonal shape and an end piece (22) secured to the lip. **Murphy** does not specifically disclose the lip as being formed by folding over an end portion of the tube, however, the method of forming the device is not germane to the issue of patentability of the device itself. Therefore, this limitation has not been given patentable weight.

*Claim Rejections - 35 USC § 103*

4. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claim 3 is rejected under 35 U.S.C. 103(a) as being unpatentable over **Ekhолmer**.

**Ekhолmer** discloses the polygonal shape as substantially triangular and hexagonal, but does not disclose the polygonal shape as being octagonal. At the time the invention was made, it would have been an obvious matter of design choice to a person of ordinary skill in the art to modify the hose of **Ekhолmer** to have an octagonal or pentagonal shape because Applicant has not disclosed that either shape

Art Unit: 3754

provides an advantage, is used for a particular purpose, or solves a stated problem over the other polygonal shapes. One of ordinary skill in the art, furthermore, would have expected Applicant's invention to perform equally well with the triangular or hexagonal shape. Therefore, it would have been an obvious matter of design choice to modify the tube of **Ekholmer** to obtain the invention as specified in claim 3.

5. Claims 4 and 6 are rejected under 35 U.S.C. 103(a) as being unpatentable over **Murphy**.

**Murphy** generally discloses the polygonal shape as square, but does not disclose the polygonal shape as being octagonal, hexagonal or pentagonal. At the time the invention was made, it would have been an obvious matter of design choice to a person of ordinary skill in the art to modify the hose of **Murphy** to have an octagonal, hexagonal or pentagonal shape because Applicant has not disclosed that either shape provides an advantage, is used for a particular purpose, or solves a stated problem over the other polygonal shapes. One of ordinary skill in the art, furthermore, would have expected Applicant's invention to perform equally well with the square shape. Therefore, it would have been an obvious matter of design choice to modify the tube of **Ekholmer** to obtain the invention as specified in claims 4 and 6.

*Conclusion*

6. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. The patents to Hasslberger et al., Graham, Blanchet, and Douglas are all pertinent to Applicant's invention in disclosing tubes having folded ends. The patents to Bataille and Vetoretti et al. are pertinent in disclosing tubes having ends with polygonal shaped cross-sectional ends.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to **Patrick F. Brinson** whose telephone number is (571) 272-4897. The examiner can normally be reached on M-F 7:30-3:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, **Michael Y. Mar** can be reached on (571) 272-4906. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Application/Control Number: 10/749,195  
Art Unit: 3754

Page 6

*Patrick F. Brinson*

Patrick F. Brinson  
Primary Examiner  
Art Unit 3754

P. F. Brinson  
July 24, 2005